

Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes
9 VAC 20-140-10 et seq.

CHAPTER 140. REGULATIONS FOR THE CERTIFICATION OF RECYCLING
MACHINERY AND EQUIPMENT FOR TAX EXEMPTION PURPOSES

9 VAC 20-140-10. Definition Incorporated by Reference.

The definitions set out in Part I of the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) are incorporated by reference.

9 VAC 20-140-20. Definitions.

The following terms have, for the purpose of this chapter, the following meaning:

"Act" means the Virginia Waste Management Act.

"Applicant" means any and all persons seeking certification of recycling machinery and equipment for tax exemption purposes.

"Certification" means a signed statement by the Director of the Department of Environmental Quality that the identified machinery and equipment qualify as integral to the recycling process.

"Department" means the Department of Environmental Quality.

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"Director" means the Director of the Department of Environmental Quality.

"Finished product" means, for the purpose of these regulations, material that has been completely processed and is ready for sale except for packaging.

"Fixed location" means a site at which the processing or manufacturing is accomplished on a continuing basis.

"Integral to the recycling process" means that the machinery and equipment or system of machinery and equipment is used primarily to process recyclable material to meet a manufacturer's material input specifications or to incorporate recyclable material into a manufacturing process.

"Machinery and equipment" means a mechanical unit or system which processes material.

"Person" means an individual, corporation, partnership, association, or any other legal entity.

"Primarily" means ~~over~~ 50% or greater of time, of usage, or of other appropriate measure.

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"Process" or "processing" means preparation, treatment, or conversion of a product or material by an action, change or function or a series of actions, changes or functions that bring about a desired end result.

~~"Purchase price" means the amount for which the machinery and equipment is purchased, excluding (i) any cash discount allowed and taken, (ii) installation charges or the cost of installation, (iii) transportation charges, or (iv) charges for maintenance agreements or contracts.~~

"Recyclable" means capable of being diverted or reclaimed from the waste stream and prepared for further beneficial use through the recycling process.

"Recycled" means having reached the end of one useful life or one intended purpose, and then being converted and utilized as a raw material in the production of another product which may or may not be similar to the original product. The resultant manufactured product is said to have recycled content.

"Recycling" means the process of separating a given product or material from the waste stream and processing it so that it is used again as material input for a product which may or may not be similar to the original product.

9 VAC 20-140-30. [Reserved]

9 VAC 20-140-40. Purpose of Regulation.

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The purpose of this regulation is to establish the procedure for certification of recycling machinery and equipment as integral to the recycling process and for use primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth, and used in manufacturing facilities or plant units which manufacture, process, compound, or produce for sale recyclable items of tangible personal property at ~~fixed~~ business locations in the Commonwealth. Such certification would also allow the purchaser of such machinery and equipment to apply for an exemption from personal property taxes as authorized by the local taxing authority.

9 VAC 20-140-50. Administration of Regulation.

The director of the department is authorized to administer this regulation in accordance with the Virginia Waste Management Act, §§10.1-1400 through 10.1-1457 of the Code of Virginia.

9 VAC 20-140-60. Applicability of Regulation.

This chapter will be applicable to any applicant to the department for machinery and equipment certification, ~~providing provided~~ that this ~~person~~ applicant has incurred or will incur a tax liability to which the tax exemption can be applied.

9 VAC 20-140-70. Machinery and Equipment.

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A. Qualifying recycling machinery and equipment including any piece or system of machinery or equipment used ~~at a fixed location~~ in the Commonwealth primarily to process recyclable materials into a product suitable for sale. Such processing may include, but is not limited to, flattening, shredding, melting, pulping, compaction, granulation, liquification or classification.

B. Qualifying recycling machinery and equipment also include any piece or system of machinery or equipment in a manufacturing facility primarily used to incorporate recycled material into a manufacturing process.

C. The following shall not qualify as recycling machinery and equipment:

1. Machinery and equipment used in the preparation of all or any part of the municipal solid waste (MSW) stream for the purpose of combustion, unless otherwise determined by the director to ~~have significant recycling intent~~ be a process with a significant recycling value.

2. Machinery and equipment used to incorporate a finished product with recycled content, which is no longer considered to be a solid waste unless otherwise determined by the director.

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3. Machinery and equipment used exclusively to handle finished products unless otherwise determined by the director.

24. Non-processing or non-manufacturing machinery and equipment.

35. Buildings or other structures.

6. Repairs and maintenance items.

9 VAC 20-140-80. Location.

In order to qualify, for state tax credit, recycling machinery or equipment must be operated at a facility located in Virginia. To qualify, for local tax exemption, recycling machinery or equipment must be operated at a fixed location in Virginia.

9 VAC 20-140-90. Pollution Abatement.

Recycling includes the ~~exclusion and redirection~~diversion of material from the waste stream, thereby reducing the amount of material that ultimately has to be deposited in a solid waste management disposal facility or discharged into the environment. Therefore, recycling can reduce the potential for pollution, and a facility (and the related machinery and equipment) which processes recyclables to a manufacturer's specifications or utilizes recycled materials in production shall qualify as a pollution abatement system.

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9 VAC 20-140-100. Equipment Documentation.

In order to be considered for a certificate, the purchaser of the recycling machinery and equipment must ~~file Form DWM50-11 with~~ apply to the department, providing at a minimum:

1. The purchaser's name and address;
2. The name and location of the facility in which the machinery and equipment will be used;
3. A complete description of the machinery and equipment and a complete description of its intended use in the facility;
4. A statement by the purchaser of the machinery and equipment that would qualify the purchase for tax consideration;
- ~~5. The purchase price of the machinery and equipment, i.e., the base amount on which the current value is to be computed for the purpose of the tax exemption; and~~
- ~~6~~5. Documentation of ownership (copies of receipts, vouchers, or paid invoices) appropriate for filing with the local taxing authority.

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9 VAC 20-140-110. Department Certification.

The department will review the information provided ~~on Form DWM50-11~~ to determine if the machinery or equipment meets the criteria specified in the Code of Virginia. This application review will follow the process established by 9 VAC 20-140-170 B.

9 VAC 20-140-120. Locality Certification.

After receiving a copy of the machinery or equipment certification from the department, the applicant will be responsible for validating the installation and operation of the machinery and equipment to the satisfaction of the local taxing authority.

9 VAC 20-140-130. Certification Period.

Machinery and equipment certified through this process shall retain certification status until its operation no longer complies with the standards established in ~~Part III of this chapter~~ 9 VAC 20-140-70 of this regulation.

9 VAC 20-140-140. Appeal Procedure.

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All appeals taken from actions of the director relative to the provisions of this chapter shall be governed by the Administrative Process Act (Chapter 1.1:1 [§9-6.14:1 et seq.] of Title 9 of The Code of Virginia).

9 VAC 20-140-150. ~~Severability. (Repealed)~~

~~A. If any provision or part of this chapter is held invalid, unconstitutional or inapplicable to any person, or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of these regulations and their application.~~

~~B. This chapter supersedes and replaces all previous regulations of the department to the extent that those prior regulations conflict with the regulations presented here. Prior regulations remain in effect where no conflict exists.~~

~~C. This chapter shall remain in effect until the Virginia Waste Management Board, in subsequent formal action, shall amend, rescind or otherwise alter it. Such an action will be specific in its detail and cite these regulations by their title. Where there appears to be a conflict with these regulations and regulations adopted at a future date, and such future regulations do not specifically clarify this chapter, this chapter shall be superior.~~

~~D. These regulations are completely separate from all federal regulations.~~

9 VAC 20-140-160. General.

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The applicant affected by this chapter may petition the director to grant a variance or an exemption from any of this chapter, subject to the provisions of this part. ~~Any petition submitted to the director is also subject to the provisions of the Administrative Process Act.~~

9 VAC 20-140-170. Administrative Procedures.

A. General petitioning requirements. The petition shall be submitted to the director by certified mail and shall include:

1. The petitioner's name and address;
2. A statement of petitioner's interest in the proposed action;
3. A description of desired action and a citation of the regulation from which a variance is requested;
4. A description of need and justification for the proposed action;
5. The duration of the variance, if applicable;
6. The potential impact of the variance on public health or the environment;

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7. Other information believed by the applicant to be pertinent; and

8. The following statement signed by the petitioner or authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

B. Petition processing.

1. After receiving a petition that includes the information required in 9 VAC 20-140-170.A, the director will determine whether the information received is sufficient to render the decision. If the information is deemed insufficient, the director will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for additional information. If the director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with 9 VAC 20-140-170.B.3. If the director continues to

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believe that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Administrative Process Act.

3. ~~After the petition is deemed complete:~~ Decisions to grant or deny a petition are subject to the provisions of Article 3 of the Virginia Administrative Process Act (9-6.14:1 et seq. of the Code of Virginia).

~~a. The director will make a tentative decision to grant or deny the petition.~~

~~b. Where the petition is tentatively denied, the director will offer the petitioner the opportunity to withdraw the petition, submit additional information, or request the director to proceed with the evaluation.~~

~~c. Upon a written request of the applicant, the director may, at his discretion, hold an informal fact finding meeting described in §9-6.14:11 of the Administrative Process Act. The person requesting a hearing shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The director may in any case decide on his own motion to hold such a meeting.~~

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~~d. After evaluating all comments, the director will within 15 days after the expiration of the comment period, notify the applicant of the final decision.~~

C. Petition resolution. If the director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the director that the petitioner has failed to comply with any ~~variance~~ requirements of the variance.

FORMS

Form DEQ 50-11, RECYCLING MACHINERY EQUIPMENT CERTIFICATION, dated 5/30/00